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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,294	05/23/2000	Andreas Bleckmann	BEIERSDORF 614-WCG	3516

7590 11/19/2003
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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/19/2003

28

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/577,294

Applicant(s)

BLECKMANN ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


GREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): 1) the Double Patenting rejection over 09/428421, as this application has been abandoned. It is respectfully noted that though Applicant claims that 09/963161 is also abandoned, the Patent Office has not recorded this Application as abandoned; 2) the 35 USC 112 rejection over the phrase "condensation products of polyglycols and amines"..

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 112, 103, and double patenting rejections are maintained for reasons of record in the Office Action mailed 7/22/03, Paper No. 25; b) Applicant argues, "The examiner's reliance on In re Young is not believed to be well founded for two reasons. First, the reference to previous patents was not only to show that these terms had been allowed in the past but also to provide evidence that these terms had acquired meaning in the art and that one of ordinary skill would be apprised of these meanings". This argument is not persuasive, as the patents provided no such evidence. Applicant argues, "while the examiner is not precluded from using case law to support her positions, it is unclear what portion and how the fact pattern in In re Young is similar to that found in this application". This argument is not persuasive, as the Examiner clearly stated the reliance on this case law in the previous Office Action. Furthermore, it is pointed out that the rejection made by the Examiner does not rely upon case law, but the Examiner relied upon case law to respond to Applicant's arguments. While the Examiner agrees that double inclusion is allowed, it is not clear whether the terms "lipophilic" and "lipophilic constituents" are the same or distinct. Furthermore, the specification does not define these terms separately and one of ordinary skill in the art would not be apprised of a difference between the terms. The term "derivative" in the instant claims is vague and indefinite, as the metes and bounds of the claim containing this term are unascertainable. Does this mean that the cationic cellulose is hydroxylated? aminated? carboxylated. . . The specification does not define this term in reference to cationic celluloses, and one of ordinary skill in the art would not be apprised of its meaning. Applicant's arguments toward the 35 USC 103 rejections are not persuasive. It is respectfully pointed out that Fanger et al. teach that conditioning agents can be added to their composition and that Albacary's et al. is relied upon to teach specific cosmetic conditioning agents that are conventional in the cosmetic art. Thus, an appropriate combination of the two references was made. It is pointed out that the open-ended "comprising" language of the instant claims does not exclude an additional ingredients, thus Applicant's arguments against an essential ingredient required by Fanger et al. is not persuasive. The Examiner additionally points out, in response to Applicant's arguments, that viscosity is established as a result-effective variable. .